

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 439
FINAL READING

Introduced by Kremer, 34; Hudkins, 21; Stuhr, 24

Read first time January 13, 2005

Committee: Agriculture

A BILL

1 FOR AN ACT relating to grain; to amend sections 75-902, 75-903,
2 75-905, and 88-543, Reissue Revised Statutes of Nebraska,
3 and sections 88-526 and 88-528, Revised Statutes
4 Supplement, 2004; to change provisions relating to grain
5 dealers and grain warehouses; to provide requirements
6 relating to direct delivery grain; to harmonize
7 provisions; to repeal the original sections; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-902, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 75-902. For purposes of the Grain Dealer Act, unless the
4 context otherwise requires:

5 (1) Commission means the Public Service Commission;

6 (2) Direct delivery grain has the same meaning as in
7 section 88-526;

8 (3) Direct delivery obligation has the same meaning as in
9 section 88-526;

10 (4) Grain includes, but is not limited to, all
11 unprocessed beans, whole corn, milo and other sorghum, wheat, rye,
12 barley, oats, millet, safflower seed and processed plant pellets,
13 alfalfa pellets, and any other bulk pelleted agricultural storable
14 commodity, except grain which has been processed or packaged for
15 distribution as seed;

16 ~~(3)~~ (5)(a) Grain dealer means any person, partnership,
17 limited liability company, corporation, or association, ~~other than~~
18 ~~a custom feeder of livestock or poultry or a grain warehouse~~
19 ~~licensed under the Grain Warehouse Act or located in Nebraska and~~
20 ~~licensed under the United States Warehouse Act that does not buy,~~
21 ~~sell, or transport grain other than grain that is received at its~~
22 ~~licensed warehouse facilities, who (a) that (i) buys grain from its~~
23 the owner or producer of the grain within this state for purposes
24 of selling such grain, ~~(b)~~ (ii) transports grain into this state
25 for purposes of selling such grain, or ~~(c)~~ (iii) acts as an
26 employee or agent of a buyer or seller for purposes of collective
27 bargaining in the marketing of grain.

28 (b) Grain dealer does not include (i) a custom feeder of

1 livestock or poultry or (ii) a warehouse licensee under the Grain
2 Warehouse Act or a warehouse licensee under the United States
3 Warehouse Act of a warehouse located in Nebraska if the warehouse
4 licensee does not buy, sell, or transport grain other than grain
5 that is received at its licensed warehouse facilities;

6 (6) In-store transfer has the same meaning as in section
7 88-526; and

8 ~~(4)~~ (7) Post-direct delivery storage position has the
9 same meaning as in section 88-526; and

10 (8) Producer means the owner, tenant, or operator of land
11 in this state who has an interest in and receives all or part of
12 the proceeds from the sale of grain produced on that land.

13 Sec. 2. Section 75-903, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 75-903. All grain dealers doing business in this state
16 shall be licensed by the commission. If the applicant is an
17 individual, the application shall include the applicant's social
18 security number. To procure and maintain a license, each grain
19 dealer shall:

20 (1) Pay an annual fee of sixty dollars which shall be due
21 on or before the date established by the commission for each
22 license and a registration fee not to exceed forty dollars per year
23 for each vehicle used by such licensee to transport grain. Such
24 fees shall be paid to the State Treasurer and credited to the
25 General Fund;

26 (2) Equip each vehicle used by the licensee for grain
27 transportation with a commercial license plate registered with the
28 Department of Motor Vehicles, except that a licensee who resides in

1 another state shall license such vehicles according to the laws of
2 his or her state of residence;

3 (3) Affix a grain dealer plate issued by the commission
4 to each vehicle used by the licensee;

5 (4) File security which may be a bond issued by a
6 corporate surety company and payable to the commission, an
7 irrevocable letter of credit, or a certificate of deposit, subject
8 to the approval of the commission, for the benefit of any producer
9 or owner within this state who files a valid claim arising from a
10 sale to or purchase from a grain dealer. The security shall be in
11 the amount of thirty-five thousand dollars or seven percent of
12 grain purchases or exchanges by the grain dealer in the preceding
13 license year, whichever is greater, not to exceed three hundred
14 thousand dollars. Amounts used in the calculation of the security
15 shall include all direct delivery grain purchases and exchanges
16 valued on the date delivery is made. Amounts used in the
17 calculation of the security shall not include any transactions in
18 which direct delivery grain is exchanged for a post-direct delivery
19 storage position and the post-direct delivery storage position is
20 created by an in-store transfer on the same date as the delivery of
21 the direct delivery grain. Such security shall be furnished on the
22 condition that the licensee will pay for any grain purchased upon
23 demand, not later than thirty days after the date of the last
24 shipment of any contract. The liability of the surety shall cover
25 purchases and sales made or arranged by the grain dealer during the
26 time the bond is in force. A grain dealer's bond filed with the
27 commission shall be in continuous force and effect until canceled
28 by the surety. The liability of the surety on any bond required by

1 this section shall not accumulate for each successive license
2 period during which the bond is in force; and

3 (5) File a reviewed or audited fiscal year-end financial
4 statement prepared by a person or firm which holds a permit granted
5 by the Nebraska State Board of Public Accountancy. If licensing as
6 an individual, the financial statement shall be prepared in
7 accordance with Other Comprehensive Basis of Accountancy, as filed
8 with the board, for a personal financial statement, using
9 historical cost and accrual basis of accounting. If licensing as a
10 partnership, corporation, or limited liability company, the
11 financial statement shall be prepared in conformity with accounting
12 principles generally accepted in the United States. The financial
13 statement shall include: (a) A statement of income showing profit
14 or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a
15 statement of proprietor's capital or retained earnings; (e) the
16 volume and dollar value of the grain purchases the licensee made in
17 Nebraska during the fiscal year; (f) the volume and dollar value of
18 transactions in which direct delivery grain is exchanged for a
19 post-direct delivery storage position and the post-direct delivery
20 storage position is not created by an in-store transfer on the same
21 date as the delivery of the direct delivery grain; and ~~(f)~~ (g) the
22 accountant's certification, assurances, opinions, and comments and
23 the notes with respect to the financial statement. If the volume
24 and dollar value of the grain purchases is not reported, the grain
25 dealer shall file the maximum grain dealer security as required by
26 the Grain Dealer Act.

27 If an applicant for a grain dealer license is a wholly
28 owned subsidiary of a parent company and such a financial statement

1 is not prepared for the subsidiary, the parent company shall submit
2 its reviewed or audited fiscal year-end financial statement and
3 shall execute an unconditional guarantee agreement as prescribed by
4 the commission.

5 Sec. 3. Section 75-905, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 75-905. (1) Except as provided in subsection (2) of this
8 section, no seller shall have recourse to the grain dealer's
9 security unless the seller:

10 (a) Demands that payment from the grain dealer be made
11 within thirty days after the date the grain dealer takes possession
12 of the seller's grain;

13 (b) Negotiates any negotiable instrument issued as
14 payment for grain by the grain dealer within thirty days after its
15 issuance; and

16 (c) Notifies the commission within thirty days after any
17 apparent loss to be covered under the terms of the grain dealer's
18 security.

19 (2) When grain is delivered to a grain dealer in multiple
20 shipments comprising one contract, the seller shall not have
21 recourse to the grain dealer's security unless the seller notifies
22 the commission within thirty days after the date of the last
23 shipment of any apparent loss to be covered under the terms of the
24 grain dealer's security.

25 (3) The grain dealer's security shall provide security
26 for direct delivery grain until any post-direct delivery storage
27 position is created for a period not to exceed thirty days after
28 the date of the last shipment of the contract.

1 Sec. 4. Section 88-526, Revised Statutes Supplement,
2 2004, is amended to read:

3 88-526. As used in the Grain Warehouse Act, unless the
4 context otherwise requires:

5 (1) Commission ~~shall mean~~ means the Public Service
6 Commission;

7 (2) Direct delivery grain means all grain that is bought,
8 sold, or transported in the name of a warehouse licensee, other
9 than grain that is received at the licensed warehouse facilities;

10 (3) Direct delivery obligation means the obligation of a
11 warehouse licensee or grain dealer to transfer title to
12 warehouse-owned grain to a producer by an in-store transfer upon
13 the delivery of direct delivery grain. A direct delivery
14 obligation is treated as a grain dealer obligation until such time
15 as it is satisfied by an in-store transfer;

16 (4) Grain ~~shall mean~~ means wheat, corn, oats, soybeans,
17 barley, rye, flax, or sorghum which has not been processed or
18 packaged for the purpose of distribution as seed, including, but
19 not limited to, edible beans, whole corn plant pellets, alfalfa
20 pellets, millet, sunflower seed, safflower seed, and any other bulk
21 pelleted agricultural storable commodity;

22 (5) Grain dealer has the same meaning as in section
23 75-902;

24 ~~(3)~~ (6) Grain in storage ~~shall mean~~ means any grain which
25 has been received at any warehouse and to which title has not been
26 transferred to the warehouseman by signed contract or priced scale
27 ticket;

28 (7) In-store transfer means a method by which a warehouse

1 licensee transfers title to warehouse-owned grain to any person in
2 satisfaction of a direct delivery obligation between the warehouse
3 licensee or grain dealer and the producer, and the grain remains in
4 the warehouse;

5 (8) Post-direct delivery storage position means a storage
6 position acquired through an in-store transfer in satisfaction of a
7 direct delivery obligation;

8 ~~(4)~~ (9) Warehouse ~~shall mean means~~ any grain elevator,
9 mill, grist mill, building, or receptacle in which grain is held in
10 storage for more than ten consecutive days;

11 ~~(5)~~ (10) Warehouse licensee ~~shall mean means~~ any
12 warehouseman who is licensed pursuant to the Grain Warehouse Act;
13 and

14 ~~(6)~~ (11) Warehouseman ~~shall mean means~~ any person,
15 partnership, limited liability company, corporation, or association
16 who (a) receives grain for storage or stores or offers to store
17 grain for legal consideration for another person, partnership,
18 limited liability company, corporation, or association in a
19 warehouse where delivered or (b) receives grain for shipment to
20 other points for storage, consignment, or resale either in or out
21 of this state.

22 Sec. 5. Section 88-528, Revised Statutes Supplement,
23 2004, is amended to read:

24 88-528. Each applicant for a license and each warehouse
25 licensee shall annually file an application with the commission and
26 shall submit to a criminal background check as set forth in section
27 88-528.01. The application shall be in the form prescribed by the
28 commission to do business under the Grain Warehouse Act and shall

1 include an audited or reviewed fiscal year-end financial statement
2 prepared in accordance with generally accepted accounting practices
3 in the United States by a person or firm which holds a permit
4 granted by the Nebraska State Board of Public Accountancy. If the
5 applicant files a reviewed fiscal year-end financial statement, the
6 applicant shall also provide additional security pursuant to
7 section 88-530 in such amount as the commission requires. If
8 licensing as an individual, the financial statement shall be
9 prepared in accordance with Other Comprehensive Basis of
10 Accountancy, as filed with the board, for a personal financial
11 statement, using historical cost and accrual basis of accounting.
12 The financial statement shall include: (1) A balance sheet; (2) a
13 statement of income showing profit or loss; (3) a statement of
14 retained earnings; (4) a statement of changes in the financial
15 position; and (5) the accountant's certifications, assurances,
16 opinions, comments, and notes with regard to such financial
17 statement. An applicant may also submit a valuation of assets by
18 competent appraisal acceptable to the commission for inclusion in
19 computing net worth for the purpose of meeting any net worth
20 requirements imposed by the act or rules and regulations of the
21 commission. If a valuation of assets is submitted, no more than
22 seventy percent of appraised value shall be used in determining
23 compliance with net worth requirements. Such application shall set
24 forth the location of the warehouse to be used by the applicant,
25 its relation to railroad trackage, its capacity, its general plan
26 and equipment, and its ownership.

27 If an applicant for a license is a wholly owned
28 subsidiary of a parent company and such a financial statement is

1 not prepared for the subsidiary, the parent company shall submit
2 its audited fiscal year-end financial statement and shall execute
3 an unconditional guarantee agreement as prescribed by the
4 commission. A parent company may also submit a valuation of assets
5 on behalf of an applicant that is a wholly owned subsidiary of the
6 parent company.

7 Sec. 6. Section 88-543, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 88-543. (1) No warehouse licensee or partner, limited
10 liability company member, officer, or agent thereof shall: ~~issue~~

11 (a) Issue a receipt for grain not actually received. If
12 at any time there is less grain in a warehouse than outstanding
13 receipts issued for grain, there shall be a presumption that the
14 warehouse licensee or partner, limited liability company member,
15 officer, or agent thereof has wrongfully removed grain, has
16 wrongfully caused grain to be removed, or has issued receipts for
17 grain not actually received, and has violated this section;

18 (b) Create a post-direct delivery storage position
19 without issuing proper documentation consistent with rules and
20 regulations adopted and promulgated by the commission;

21 (c) Create a post-direct delivery storage position at any
22 time the warehouse licensee does not have sufficient
23 warehouse-owned grain or grain in open storage to cover the storage
24 position created for the benefit of the producer; or

25 (d) Record grain as being received or loaded out that has
26 not been physically deposited in or physically removed from the
27 warehouse.

28 (2) Any warehouse licensee or partner, limited liability

1 company member, officer, or agent thereof who knowingly and
2 willingly violates this section shall be guilty of a Class IV
3 felony.

4 Sec. 7. Original sections 75-902, 75-903, 75-905, and
5 88-543, Reissue Revised Statutes of Nebraska, and sections 88-526
6 and 88-528, Revised Statutes Supplement, 2004, are repealed.

7 Sec. 8. Since an emergency exists, this act takes effect
8 when passed and approved according to law.